BILL ANALYSIS

S.B. 1239
By: Middleton
Trade, Workforce & Economic Development
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Sovereign debt refers to money that a country's government borrows to finance its spending beyond its revenue. This debt can be issued in the form of bonds or loans and is often held by foreign and US investors, banks, private creditors, and other entities. Many borrowing countries have historically chosen to issue under the law of New York, an artifact of New York's historical primacy in financial markets and the significant financial industry presence. The bill sponsor has informed the committee that recently proposed legislation in New York would create serious legal uncertainty for lenders and borrowers alike, that the prospect of this legislation has prompted creditors to consider other jurisdictions, and that while the New York courts and financial sector presence have been appealing, Texas has been mentioned as an alternative jurisdiction. The bill sponsor has further informed the committee that the combination of financial industry growth and judicial strength makes Texas a compelling choice for managing complex sovereign debt issues that could rival traditional centers like New York. S.B. 1239 seeks to position Texas to be a leader in sovereign debt cases by ensuring that causes of action relating to a security travel with that security and that parties may agree to modify an agreement to choose the law of a different jurisdiction, including Texas. The bill provides that, if a security is determined to be invalid under the law of the issuer's jurisdiction, the law agreed in the governing documentation would govern the consequences of such invalidity.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1239 amends the Business & Commerce Code to establish that, if a security is determined not to be valid under the local law of the issuer's jurisdiction, the law of the jurisdiction agreed by the issuer of the security to govern the construction or interpretation of documents evidencing or containing the terms of the security and matters arising out of or relating to the security and documents, including the enforceability of the security and the rights and remedies available to a purchaser of such a security, governs the consequences to the issuer and the purchaser of the invalidity.

S.B. 1239 establishes that the rights acquired by a purchaser of a certificated or uncertificated security issued by a foreign state as defined by federal law relating to jurisdictional immunities of foreign states, unless otherwise agreed in writing, include, without limitation, all of the transferor's claims and demands as follows, regardless of whether the claims and demands are known to exist:

- a claim or demand for damages or rescission against the issuer or other party to such security;
- a claim or demand for damages against the trustee, depositary, or other party under any indenture under which such security was issued or is outstanding;
- a claim or demand for damages against any issuer, underwriter, trustee, depositary, guarantor, or other party to the obligations of the issuer; and
- a claim or demand to enforce any rights of a security holder under the terms of such security, including rights arising prior to the date of the transfer.

The bill prohibits, except as specifically provided by statute with respect to assignments of the claims and demands of a transferor to the purchaser of a certificated or uncertificated security issued by a foreign state, an issuer or other party subject to any obligation, or to any claim or demand for damages, with respect to any such security, from asserting a defense to such an obligation, claim, or demand, or asserting a claim against the purchaser, based on the intent of the purchaser, or an assignor or assignee of the purchaser, to assert or pursue through litigation or other lawful means the enforcement of the purchaser's rights thereto.

S.B. 1239 establishes that, unless otherwise agreed in writing, the choice of governing law specified in the terms applicable to a certificated or uncertificated security issued by a foreign state in a qualified transaction, including any change in that governing law, applies retroactively to all issues relating to such security. The bill authorizes a security issued by a foreign state in a qualified transaction to be modified or amended, in accordance with such security's terms, to permit amendment of the terms of the security by less than unanimous consent, and to choose the law of a different jurisdiction to govern the security. Such an amendment applies retroactively unless otherwise agreed by the parties in writing.

EFFECTIVE DATE

September 1, 2025.